

रजिस्टर्ड न० एल०-33/एस०एम०/13-14/96.



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शनिवार, 31 मई, 1997/10 ज्येष्ठ, 1919

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-171002, 23 मई, 1997

संख्या 3-9/97-ई० एल० एन०.—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/हि० प्र०-वि० स०/1/95, दिनांक 14 मई, 1997 तदनुसार 24 वैशाख, 1919 (शक्) अंग्रेजी रूपान्तर सहित, जिसमें हिमाचल प्रदेश उच्च न्यायालय, शिमला, का निर्वाचन अर्जी संख्या 1 वर्ष 1995 का निर्णय निहित है, को जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश से,
हस्ताक्षरित/-
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग

निर्वाचन सदन,
अशोक रोड,
नई दिल्ली-110001.

14 मई, 1997

दिनांक

24 वैशाख, 1919 (शक्)

अधिसूचना

सं० 82/हि० प्र०-वि० सं०/1/95.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1995 की अर्जी संख्या 1 में शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय के तारीख 10 अप्रैल, 1997 के निर्णय को एतद्द्वारा प्रकाशित करता है।

आदेश से,
के० जे० राव,
सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi-110001.

Dated the 14th May, 1997
24 Vaisakha, 1919 (Saka)

NOTIFICATION

No. 82/HP-LA/1/95.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Judgment dated 10th April, 1997 of the High Court of Himachal Pradesh at Shimla in Election Petition No.1 of 1995.

By order,
Sd/-
(K. J. RAO)
Secretary,
Election Commission of India.

IN THE HIGH COURT OF HIMACHAL PRADESH

Appeal No.
Revision Petition No.
Civil Suit No.

✱ Election Petition No.1 of 1995

Date of decision 10th April, 1997

✱ Bipin Singh Parmar

..Petitioner

Versus

Kanwar Durga Chand

..Respondent

Coram:

The Hon'ble Mr. Justice P. K. Palli, Judge.

The Hon'ble Mr. Justice

The Hon'ble Mr. Justice.

Whether approved for reporting ? Yes

For the Petitioner: Mr. R. K. Sharma, Advocate.

For the Respondent: Pt. Om Prakash, Advocate.

P. K. PALLI, JUDGE :

The petitioner herein has called in question the election of the respondent who has been returned to the Himachal Pradesh Vidhan Sabha from Sullah Assembly Constituency in the bye election held on May 27, 1995 result of which was declared on May 30, 1995. The respondent who contested the election on Congress ticket, secured 15159 votes as against the petitioner who secured 11897 votes. There were total number of eighteen candidates who filed nomination papers and after withdrawal, only seven candidates remained in the field.

2. The petitioner has attacked the election of the respondent on several corrupt practices committed by him as enumerated from paras 6 to 19 of the petition. In para 21 it has been averred that as the petitioner has also made allegations against Shri Virbhadra Singh, Chief Minister of Himachal Pradesh who is also said to have committed corrupt practices at the instance and with the consent of the respondent and with a view of furtherance of the prospects of the election of the respondent and knowing fully well that what he was doing, was a corrupt practice, this Court should name and summon him and thereafter try him for various corrupt practices as given in the petition and take such suitable action against him as the law requires.

3. In the written statement filed by the respondent, several preliminary objections have been taken such as the affidavit in support of the petition is not attested to be true copy by the petitioner under his signatures and likewise pages 1 to 24 have not been attested as 'true copy' of the petition. The non-attestation as stated, violates the provisions contained in Section 81 (3) of the Representation of People Act and the petition is sought to be dismissed under Section 86 of the said Act.

4. It has also been stated that the petition does not furnish any triable cause of action and is liable to be dismissed. The corrupt practices allegedly committed by the respondent, lack in pleadings of the material facts on which the petitioner relies, as well as full particulars of the corrupt practices have not been enumerated. It has also been said that the petitioner has not

supplied full particulars of the persons from whom information has been derived. Particulars in respect of date, place, persons have not been properly verified in the affidavit. It has also been averred that the annexures have not been attested to be the true copies of the annexures which have been annexed to the petition and since they form integral part of the petition, it deserves to be dismissed on account of this lapse.

5. The controversy arising out of the pleadings of the parties, has given rise to the following 14 issues :

- "1. Whether the petition is within limitation ? ..OPP
2. Whether the petition suffers from non-joinder of necessary parties and violates Section 82 (b) of the Representation of People Act? If so, its effect? ..OPR
3. Whether the affidavit and pages 1 to 24 of the Election Petition are not attested to be true copy of the petition by the petitioner in the copies supplied to the respondent? If so, its effect ? ..OPR
4. Whether the allegations in the election petition do not disclose any triable cause of action and are liable to be struck off ? ..OPR
5. Whether the annexures supplied to the respondent have not been attested as true copies, if so, its effect ? ..OPR
6. Whether the allegations of corrupt practice in the petition lack in material facts as well as full particulars of corrupt practice ? If so, its effect ? ..OPR
7. Whether the affidavit in support of corrupt practice is bad in law inasmuch as the source of information is not disclosed ? ..OPR
8. Whether the respondent has committed the corrupt practice of bribery under Section 123 (1) of the Act, as alleged in paras 6, 7, 13(i) to 13(iv) & 15 of the petition ? ..OPP
9. Whether the respondent has committed corrupt practice of obtaining assistance from any person in the service of Government who is covered under Section 123 (7) of the Act, as alleged in paras 8, 11 (i), (ii) and (iii) of the petition ? ..OPR
10. Whether the returned candidate has committed the corrupt practice of providing free lift to the voters as defined in Section 123 (5) of the Act as alleged in para 10 of the petition ? ..OPP
11. Whether the respondent committed corrupt practice of undue influence as defined in section 123 (2) as alleged in para 12 of the petition ? ..Q.P
12. Whether the returned candidate has committed the corrupt practice of incurring or authorising of excess expenditure in contravention of section 77 of the Act, as alleged in paras 14 and 16 of the petition and election of returned candidate is liable to be set aside ? ..OPP
13. Whether the respondent committed the corrupt practice as defined in Section 12 (3) of the Act as contained in paras 17 & 18 of the petition ? ..OPP
14. Relief."

Vide order dated November 15, 1995, issues No. 1 to 7 have been ordered to be treated as preliminary issues. As both the learned counsel for the parties made a statement at the Bar that they did not desire to lead any evidence on these issues, the case was ordered to be listed for arguments in order to determine these issues.

6. Pt. O m Parkash, learned counsel appearing for the respondent, on issue No.1 contends that the result was declared on May 30, 1995 and the election petition having been filed on July 14, 1995 is barred by one day. The argument proceeds on the basis that a period of 45 days is prescribed for filing of election petition from the date of declaration of the result and on July, 14

1995, it would be 46th day and as the provisions of the Limitation Act do not apply, the election petition is to be dismissed as time barred.

7. This objection carries no weight in view of the latest decision of the apex Court reported in (1996) 1 SCC 169, (**Manohar Joshi vs. Nitin Bhaurao Patil and another**). While dealing with this point, it has been observed that the question whether the election petition filed on April 16, 1990 was presented within 45 days from the date of the election of the returned candidate as required by sub-section (1) of Section 81, the provisions of the Limitation Act are not applicable. Therefore, it would be governed by the General Clauses Act, 1897. This provision is applicable to the general rules of construction of all Central Acts. Their Lordships, after taking notice of the existing sub-section (1) of Section 81 as well as the rules framed under the Act, have held that the change appears to have been made to provide for affixed period in the Act itself and the petitioner is entitled to avail of the entire limitation of 45 days for presentation of the election petition. In view of the law laid down by the apex Court, issue No.1 has to be held against the respondent and the election petition is held to be within time.

8. On issue No. 2 arguments have been addressed in the manner that in para 6 of the petition, the petitioner has alleged that the respondent and the Chief Minister of Himachal Pradesh Shri Virbhadra Singh induced several candidates, who had filed nomination papers to withdraw from the election and they were given allurements and promises of political adjustments and position. In case withdrew from the contest. Pressure was put on these persons and these persons withdrew from the contest after they were assured of appointments and adjustments in Corporations etc. It would, thus, be seen that all that the petitioner has tried to convey in paragraph 6, is that the candidates mentioned therein had withdrawn from the contest because of the allurements which amount to bribery. In reply it is said that the petition is liable to be rejected on account of their non-joinder in the petition. Section 82 of the Act deals with the parties to the petition. According to this provision, the petitioner has to join as respondents where the petitioner, in addition to claiming declaration that the election of the returned candidate is void further claims a declaration that he himself has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates. Clause (b) also envisages that other candidates against whom allegations of any corrupt practices are made in the petition, shall also be joined as respondents.

9. The answer to this issue would also depend on the decision to be arrived at on the other issues and it is desirable that the other issues are taken up for determination, and decision, to be arrived at, would also cover the objection of the respondent in this respect which is covered by this issue.

10. Pt. Om Parkash, learned counsel for the respondent, has addressed comprehensive arguments on issue No. 3 and 5 since both issues are interconnected. The arguments proceed on the basis that the affidavit as well as the pages of the petition from 1 to 24 have not been properly attested. It is only at page 25, as pointed out by the learned counsel, that the words "attested to be true copy" appear and on the other pages of the petition as well as of the affidavit, these words are conspicuously missing.

11. It is next contended that the first three pages of the affidavit have not been attested to be true under the signatures of the petitioner and the defect is fatal and the petition deserves to be rejected. In further support of his contention, the learned counsel has pointed out that even Annexures P-1 to P-16 have not been attested as true copies and they being integral part of the petition, the petition is straightway liable to be rejected in view of the provisions contained in sub-section (3) of Section 81 as well as per proviso to Section 83. My attention has also been brought to the verification of the petition at page 25 of the record. In the verification, paras 1 to 5 and 21 to 23 have been verified on the basis of personal knowledge whereas paras 6 to 20 are verified as per information received.

12. Learned counsel has thereafter taken me to the affidavit at page 4 (para 12) where statement made in paragraph 21 of the petition about the commission of various corrupt practices have been verified to be true as per information. The argument is that para 21 of the petition has been included for purposes of verification in the petition based on personal knowledge whereas the same para in the affidavit stands verified as per information of the petitioner. These defects, according to the learned counsel, are in total negation of the provisions of Section 81 as well as Section 82 of the Act and the petition cannot proceed further and is liable to be dismissed upholding the preliminary objections.

13. Learned counsel then proceeds to address arguments on issues No. 4 and 6. A look at the phraseology of these two issues makes out that these two issues are also inter-connected and can be disposed of under one heading. It is argued from the side of the respondent that the contents of the petition have to be interpreted by the Court in order to find out whether the contents disclose cause of action and further whether the petition lacks any material particulars in respect of corrupt practices alleged in the petition. Before appreciating this argument, it will be useful to keep in mind the law laid down in this respect by the Supreme Court in AIR 1986 SC 1253, (*Azhar Hussain vs. Rajiv Gandhi*). In that case also the election petition was ordered to be dismissed by the High Court on the ground of non-compliance of the provisions of Section 83, i.e. for failure to incorporate in the petition material facts as well as particulars relating to the alleged corrupt practices. Provisions of Order 7 Rule 11 of the Code of Civil Procedure were also taken into account where, in a situation, the petition has to be dismissed at the threshold itself as not disclosing any cause of action. Their Lordships has also taken into account the judgment reported in AIR 1972 SC 515, (*Hardwari Lal vs. Kanwal Singh*) as well as some other judgments on the point and thereafter it was concluded in paragraph 11 like this :

"11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant's case (1969) 3 SCC 238: (AIR 1969 SC 1201) has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in Udhav Singh's case (1977) 1 SCC 511: (AIR 1977 SC 744) the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such require to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83 (1) (a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail."

14. While dealing with the cause of action in paragraph 12, it was observed that the whole purpose of conferment of such power is to ensure that a litigation which is meaningless and bound to prove abortive, should not be permitted to occupy the time of the Court and exercise the mind of the respondent. The sword of Damocles need not be kept over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the Court readily exercises the power to

reject a plaint if it does not disclose any cause of action. It was further said that where the pleadings are likely to cause embarrassment or delay, the fair trial of the action or which is otherwise an abuse of the process of law, the Courts in exercise of the powers under the Code of Civil Procedure can treat any point going to the root of the matter such as pertaining to jurisdiction or maintainability, as a preliminary point and can dismiss the suit without proceeding to order evidence and hear elaborate arguments. Such being the position pertaining to ordinary civil litigation, there is a greater reason for taking the same view in regard to the matters pertaining to elections.

15. In the democratic set up of this country, it is the wish and the will of the people which is reflected in choosing their representatives so that their views are well-represented in the Assembly and in the Parliament. Every effort has, therefore, to be made to give due and proper respect to the wishes of the electorate unless there has been some kind of fraud or deception played upon them. As the election process involves a very heavy expenditure on public, election has not to be set aside lightly and the Courts of law while dealing with the petitions are to act with greater caution. The case would be altogether different where a case of corrupt practice is established and where the Court, on appreciation of the material, comes to the opinion that the result of the election does not reflect the true voice of the electorate. In such situation, the Courts are not expected to be influenced by any such considerations and the election petition shall have to be accepted.

16. The position would again be different where the material facts and particulars of the alleged corrupt practice are not furnished as per requirement of law or where the petition does not disclose a cause of action which the petitioner is called upon to show. In that situation too the petition has to be summarily dismissed and this is how this question has been answered in several judgments of the Supreme Court and of various High Courts of the country. I am further supported in my view by a recent judgment of the Rajasthan High Court reported in AIR 1995 Rajasthan 239, *Mohammad Yusuf and another vs. Bhairon Singh Shekhawat* were the learned Judge of that Court has taken into account the entire case law on the subject and while applying the provisions of Order 6, Rule 16 and Order 7, Rule 11 of the Code of Civil Procedure read with Sections 83, 86 and 87 of the Representation of People Act, the allegations in respect of Corrupt practices were ordered to be struck off being vague, general and embarrassing for fair trial of the petition. It was precisely the verification of the affidavit which was found to be defective and the election petition was rejected as not disclosing any cause of action.

17. Sub-section (3) of Section 81 of the Representation of People Act reads as under :

“81. Presentation of petitions.—

- | | | | |
|-----|---|---|---|
| (1) | * | * | * |
| (2) | * | * | * |
- (3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”

It is here that the provision to Section 83 has also to be kept in view which reads as under :

“83. Contents of petition.—(1) An election petition—

- shall contain a concise statement of the material facts on which the petitioner relies;
- shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have

committed such corrupt practice and the date and place of the commission of each such practice; and

- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings ;

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof."

18. I have been taken through the contents of para 7 where the petitioner has alleged that the Chief Minister of Himachal Pradesh Shri Virbhadra Singh deputed one Pardeep Kumar who is an IPS. Officer of the State in order to pressurise Jagjiwan Pal to withdraw from the contest. It is he who is said to have come with the offer and promise from the Chief Minister. He is said to have travelled in the vehicle of the department and was with Jagjiwan Pal on May 4 and 5, 1995 and ultimately succeeded to persuade him to withdraw from the contest. This act is said to have been done with the consent and connivance of the respondent and, thus, he is guilty of corrupt practice of bribery as given in Section 123 (1) of the Act.

19. The argument is that the contents of this para are nothing but a repetition of what the statute prescribes. No particulars time, date, place and of the persons are given. The particulars are vague, indefinite and do not conform to the test laid down by the Supreme Court. Where was the consent given, where the meeting took place and in the presence of whom, are missing.

20. The same arguments are addressed in respect of the averments made in paragraph 8 where it is said that the Chief Minister Shri Virbhadra Singh procured the services of Pradeep Kumar for assistance and furtherance of the prospects of the respondent as Jagjiwan Pal was not wholeheartedly supporting the respondent in spite of his withdrawal and Pradeep Kumar travelled to Palampur and was closetted with Jagjiwan Pal at the Rest House in order to put pressure on him to actively canvass and support the respondent. The vehicle which is said to have been used by him, is on the escort duty of the Chief Minister and it was after the persuasion by Pradeep Kumar that Jagjiwan Pal started supporting the respondent vigorously. This is attributed as corrupt practice. It is argued that the material particulars in respect of consent part as to the place, time and persons when the instructions were issued by the Chief Minister to Pradeep Kumar, are not spelled out from the contents and what was conspicuously missing is "for furtherance of the election prospects".

21. In further support of his submissions, the learned counsel relies upon the observations made by the Supreme Court in AIR 1990 SC 924, (U.S. Sasidharan vs. K. Karunakaran and another). In para 20 of the judgment at page 929, it has been observed that the instigation must be with a view to obtaining or procuring or abetting or attempting to obtain or procure the assistance for furtherance of the prospects of the first respondent's election. Para 31 of this judgment needs to be reproduced here at this stage :

- "31. Mr. Poti has drawn our attention to the observations made by this Court in *Udhav Singh v. Madhav Rao Scindia*, (1977) 1 SCC 511: (AIR 1976 SC 744) which reads as follows (p. 752 of AIR) :

Like the Code of Civil Procedure, this section also envisages a distinction between "material facts" and "material particulars". Clause (a) of sub-section (1) corresponds to Order 6, Rule 2, while clause (b) is analogous to order 6, Rule 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars

in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation."

22. In para 10 it has been said that the respondent hired, procured and engage a private bus on the date of polling for carrying the voters free to the polling stations. The said bus was challaned by the police on the election duty under the Motor Vehicles Act and, thus, the respondent is guilty of having committed corrupt practice as given in the Act.

23. Pt. Om Parkash contends that the averments, besides being vague, lack material and full particulars in respect of the names of the persons who used these vehicles for casting their votes as well as the details of procurement and payment are absolutely missing. No voter has been named who availed of this facility.

24. In respect of para 11 where the services of the Government officials are stated to have been utilized, it has been averred that the service of Kanwar Bhan for the furtherance of prospects of election of the respondent were obtained and the school was closed to enable the students to attend the public rally of the respondent Kanwar Bhan who is said to be the Headmaster of the school, went from house to house and canvassed to the voters to vote for the respondent. Some complaint is said to have been sent to the Chief Election Commissioner in this respect which has been annexed as Annexure P-3. It has also been said that services of Jagdish Chand, Hardev Katoch, Kewal Jamwal and Prithi Chard were utilized for the purposes of distributing liquor to the voters to induce them to vote for the respondent. These persons are said to be holding positions in the Government. One jeep is said to have been used for distribution of liquor in villages and this jeep was rounded up and these persons were found sitting in the said vehicle. A report was lodged which has been placed at Annexure P-4.

25. Services of Gurbakash Singh Parmar, Inspector, Co-operative Societies are also said to have been engaged. and he was seen moving in the vehicle of the respondent with the party-flag and canvassing from door to door. He is also said to be leading a party for painting slogans in favour of the respondent. Complaint made in this respect has been placed as Annexure P-6. On the night of May 26, 1995, Karwar Bhan is said to have carried liquor for the purpose of distribution to the voters. He was objected to while crossing the barrier. The act is said to be a corrupt practice.

26. It is contended that nothing has been said as to in which village the Headmaster canvassed. No number of the house nor the name of any voter has been given nor the names of any teachers have been given who were accompanying him and on what date and at which place. The number of the jeep, as stated by the learned counsel, given in the F.I.R. is different than the one given in the petition. No name of any person has been given who caught those persons and the allegations are vague and indefinite in respect of place, time and date of procurement of the vehicle and the distribution of the goods. Further, the necessary ingredients "for furtherance of election prospects of the respondent" are missing.

27. In para 12 the respondent is alleged to have threatened M.L.As. Ravinder Singh Ravi and Krishan Kumar of dire consequences in case they did not stop canvassing for the petitioner. They were given beatings by one Harbans Lal who is said to be an Upper Division Clerk in the Electricity Board. Their vehicle is said to have been damaged and the matter was reported to the police. The contents of this para are also said to be suffering from material particulars and facts.

Contents of para 13 are in respect of bribery. It is said that the Chief Minister of Himachal Pradesh Shri Virbhadra Singh on May 15, 1995 addressed a public meeting where the respondent was also present. An appeal was made to the voters who asked the Chief Minister to upgrade the school and only then they would vote for the respondent. An announcement to that effect was made and an grant of rupees fifteen lacs was announced. On this, the voters assured their votes as well as support. It is also averred that Cabinet colleagues of the Chief Minister also secured appointment letters issued to the voters in order to induce them to vote for the respondent. One Sudesh Kumari was ordered to be employed by the Public Health Minister and the application has been placed as Annexure P-9.

28. Similarly, Suresh Kumar was ordered to be appointed by the Public Health Minister and the application has been placed as Annexure P-10. Pushpa Devi is also said to have been appointed through agency of the respondent as a teacher. Application with the recommendation of an M.L.A. is placed as Annexure P-11.

29. The contents of these paras are also said to be suffering from indefiniteness and vagueness and that they do not contain full particulars and material facts as to who attended this meeting and information was received from whom. The para also lacks in particulars in respect of where these persons met nor the name of any person has been mentioned in whose presence the Chief Minister or the Ministers made these appointments. It is further stated that nothing has been said as to how the respondent in this case was concerned with all what has been said in this paragraph.

30. Para 14 of the petition says that lakhs of rupees were spent on the success of the respondent. True and correct account has to be maintained and is further to be filed with the Returning Officer of the District within a period of thirty days. The petitioner has not been able to get hold of these documents and the same have not been supplied to him under the influence of the respondent and the Chief Minister.

31. This paragraph also, according to the learned counsel, lacks full and material particulars and no election can be set aside on such vague allegations that lakhs of rupees were spent. The election can be set aside only if the ground is made out in the petition that the expenses incurred are unauthorised or exceed the statutory limit.

32. In para 15, the Chief Minister of Himachal Pradesh is said to have said in public that in case the respondent is elected, he would convert Sullah into Rohru. It is also said that as the Rohru constituency has returned the Chief Minister, the people there was given jobs in various departments and in case the respondent is elected, the electorates would be provided jobs and that he will grant more funds and concessions to the constituency. It is also said that in case the B.J.P. candidate, i.e. the petitioner is elected, the Chief Minister would not release any grant to the constituency. This statement is said to have been made with the consent of the respondent who also spoke in the rally in the same words. The voters are, thus, said to have been induced by making the offer of gifts and promises with the sole object of inducing them to vote for the respondent.

33. In para 16, some Ministers and M.L.As. are stated to have exploited the Government machinery for furtherance of the object of the prospects of the respondent in winning the election. They were using Guest Houses and the expenditure incurred in this respect has not been shown in the return. In para 17, the Chief Minister is again said to have addressed a rally on May 16, 1995 and an appeal is said to have been made to the voters on the basis of race, caste and community. In para 18, the Chief Minister as well as the respondent are said to have addressed a meeting on May 16, 1995 appealing to the voters to vote for the respondent in the name of religion and caste. Both these leaders belong to Rajput community and it is averred that it was stated that if they want to see Rajput Chief Minister of Himachal Pradesh, they should vote for the respondent.

34. It is contended that the averments in these paragraphs do not contain the name even of a single person who attended these rallies and that the inducing to the voters was made in his presence. No detail has been given as to how and in what form the Chief Minister exploited the Government machinery nor any date or name of the village has been mentioned about the visit of these Ministers and MLAs, nor any person who heard the speech and the appeal being made on the basis of caste and community stands mentioned. Nowhere it has been said that the speech created any hatred or any attempt was made to promote the chance of success of the respondent. No name of any village has been mentioned where such statements were made and before whom. While concluding his submissions on issue No. 7, it is being argued that the petition lacks the source or information and the same has not been disclosed.

35. In reply, Mr. R.K. Sharma, learned counsel appearing for the petitioner, contends that the petitioner has signed all the pages and in concluding page 25, it has been attested as true copy of the petition though the words "attested to be true copy" have not been mentioned on other pages. The argument proceeds on the basis that no such words are required on every page and the petitioner has made substantial compliance to the provisions of law. In support of the contention, reliance is placed on the judgment reported in AIR 1965 SC 815, (**Dr. Anup Singh vs. Shri Abdul Ghani and others**) where it has been held that the carbon copies of the original accompanying petition bears the signatures of the petitioner although the words "true copy" are not written on the copies above the signatures of the petitioner. It was held that the petition could not be rejected as the presence of the original signatures in the copies is sufficient to indicate that the copy is attested as true copy even though the words specifically do not appear as such. Towards the similar effect are the observations made in AIR 1964 SC 1027, (**Ch. Subbarao vs. Member, Election Tribunal, Hyderabad and others**). In that case also it was said in paragraph 12 that an election petition is not to be equated to an action at law or in equity, but as the rights are purely the creature of statute, if the statute renders any particular requirement mandatory, the courts possess and exercise no dispensing power to waive non-compliance.

36. In para 14 of the said judgment, it was held that if there is a total and complete non-compliance with the provisions of section 81 (3), the election petition might not be an election presented in accordance with the provisions of this part within Section 80 of the Act. In para 15, while interpreting the requirement of Section 81 (3) as to whether these have been complied with or not, the answer is given in para 26 where it was observed that :

"26. We do not however consider that there is really need for so much refinement when one has to look at whether there is a substantial compliance with the requirement of this provision. If the signatures now found on the copies were intended to authenticate the document to which it is appended, viz., the copy, it would only mean that the copy did not reproduce the signature in the original. There is no compelling necessity to hold that the signatures were merely intended to be a copy of those on the original in order to spell out a non-compliance with S.81 (3), seeing that a signature in original was not needed on the copy and a writing copying out the name of the signatory would suffice. The decision of this Court in Murarka's case, C.A. Nos. 30 and 31 of 1963 D/-7-5-1963 (SC) is authority for the position that the absence of a writing in the copy indicating the signature in the original would not detract the copy from being a true copy. In the circumstances, we consider that there has been substantial compliance with the requirement of S. 81 (3) in the petition that was filed by the appellant and the learned Judges were in error in directing the dismissal of the petition."

37. Learned counsel further submits in reply that when the averments in the petition are based on annexures the contents of that particular para are not to be read in isolation but are to be read along with the annexures mentioned therein. It is submitted that the pleas raised are duly supported by documents and it was not at all necessary to give more details as the documents,

referred to in the pleadings form part of the petition itself. The learned counsel thus proceeds to submit that in the documents, *i.e.* annexures attached to the petition, complete particulars in respect of complaint made have been given.

38. Learned counsel for the respondent, in rejoinder, states that no reliance can be placed on the documents as the contents mentioned therein are contradictory to the allegations made in the petition, for example, the vehicle was challaned on account of the violation of the route permit and what was said in the petition is altogether a different story. Even in the letters or applications seeking appointments, there is no role which is attributable to the respondent and Pt. Om Parkesh concludes his submissions by saying that the petition deserves outright rejection.

39. After weighing the rival contentions put forth by the learned counsel appearing for the parties and after carefully and minutely going through the contents of the petition, the reply and the case law cited at the Bar, I am of the considered opinion that the petition does lack from the non-disclosure of material facts and particulars relating to the alleged corrupt practices stated in the petition. When the services of the officers in the Government service are said to have been procured, the allegations have to be such so as to leave nothing to be filled in at a later stage by getting hold of such evidence which might fit in the circumstances. It has further to be averred that the services were procured or obtained by the elected candidate or his agent or such other persons with the consent of the candidate and further with a view to assist it furtherance of the prospects of his election, in what manner the services were so obtained and what were the facts and circumstances which would show that it was with the consent of the elected candidate or the speeches made were directed towards the fulfilment of that end. Exact words are required to be disclosed along with the time, date and place of making such a speech. It is also the requirement of law that the offending material from the speech is to be quoted as such with further elaboration as to in what context it was said or was aimed and calculated to promote the election prospects of the candidate. According to the well-set principles of pleadings, the statements are to be drawn up by stating the contentions which are going to be employed at a later stage in the trial so that the opponent knows well in advance and prepares his case to answer it. The allegations in the pleadings should be in such a form so as to give to opposite party the whole case which he is to meet and is not taken by surprise at the stage of the evidence. It would also create a difficulty for the petitioner when evidence is to be led and the same would be objected to on the ground that there is no proper plea. It is in the given situation that law of pleadings and proof assumes significance in order to lay down the principles which would govern the election petition on the same lines. The material facts and particular to be given in the election petition should not be vague or based on general statements so as to create a difficulty to ascertain the facts which arise for determination. It would, thus, require skill in sorting out material facts from the whole bundle of facts and attending circumstances and only thereafter would come the precision in pleadings. While mentioning material facts, it has to be kept in mind that the facts on which the right is claimed or based, are not omitted. The entire exercise in the pleadings is to give a fair notice to the opponent so that the parties may agree or differ and thereafter come to definite issues arising out of the controversy. The clarity of pleadings is also aimed to reduce irrelevant issues as well as irrelevant evidence which is often introduced, whereas the real issue is drifted away.

40. In the judgment reported in AIR 1986 SC 1253, (*Azhar Hussain vs. Rajiv Gandhi*), it has been laid down as to what material facts and particulars are to be given in respect of the alleged corrupt practices pertaining to the assistance obtained from a government servant. Those are :

- (a) mode of assistance;
- (b) measure of assistance; and
- (c) all various forms of facts pertaining to the assistance.

It has also been ruled that in respect of allegations as regards procuring, obtaining, abetting or attempting to obtain or procure the assistance of Government servant in election, it is also-

lutely essential to plead the kind or form of assistance obtained or procured and in what manner the assistance was obtained or procured or attempted to be obtained or procured by the elected candidate for promoting the prospects of his election.

41. The returned candidate must also be told as to what assistance he was supposed to have sought, type of assistance, the manner of assistance, the time of assistance, the persons from whom actual and specific assistance was procured. It has also been laid down that there must be statement in the election petition describing the manner in which the prospects of the election were furthered and the way in which the assistance was rendered. It has to be stated with exactness the time, the manner and the persons from whom the assistance was obtained.

42. As noticed above in the earlier part of this judgment, there is an omission on the part of the petitioner to make mention of the persons who were employed by the respondent or his agents for the purposes mentioned therein. The averments in the petition do not, in my considered opinion, satisfy the test laid down by the Hon'ble Supreme Court in its various decisions.

43. The contents are vague and indefinite and certainly leave a wide scope to the petitioner to place such evidence in respect of the meetings at the given place and date which he may find it convenient at the stage of evidence. There should be no scope left for ascribing the alleged corrupt practice in respect of a returned candidate and the failure to incorporate the essential particulars so that there is no possibility of some witnesses to be procured so as to supplement the pleadings where the foundation has not been laid. No evidence, which is at a later stage desired to be brought on record, would cure the lacuna in the pleadings, nor is permissible and in the given situation, the petition has to be rejected as disclosing no cause of action. It has not been made clear in the petition as to from where the details of the speeches were obtained. No exact extracts have been quoted. The petition also lacks the allegations to the effect that the allurements and promises were made in order to prejudice the prospects of the petitioner or were further aimed to brighten the prospects of the returned candidate. A look at the affidavit, which is an integral part of the petition, shows that the same paragraph in the petition is verified on the basis of the information received whereas the same paragraph in the affidavit is based on the basis of knowledge. In exactly similar circumstances, the observations made in the Rajasthan case reported in AIR 1995 Rajasthan 239, (**Mohammad Yusuf and another vs. Bhairon Singh Shekhawat**) can be pressed into service with advantage. While commenting on such kind of affidavit, it has been observed :

When verification of a petition and the contents of the affidavit contradict each other and present a contradictory and confusing picture, the petition has to be taken to be defective in as much as it does not present a clear picture before the respondent and the Court. Information as to whether the allegations made in the petition were based on personal knowledge of the petitioner or on his derived knowledge is of vital importance to the respondent. Source of information may not be required to be disclosed initially but that does not mean that the petitioner is allowed to equivocate on the point to the extent that he can keep both the mutually exclusive options open to himself and surprise the respondent at the hearing by adopting one of the options suiting his convenience at that time. Self contradictory verification and affidavit has therefore to be taken as a fatal defect and not a curable defect."

Observations made by the Hon'ble Supreme Court in AIR 1991 SC 1557, (**F. A. Sapa etc. etc. vs. Singora and others**) were relied upon by the learned Judge in making these observations in paras 111 and 112 of the Judgment.

44. While commenting on the corrupt practice when it comes to the proof of speeches delivered, the learned Judge in the aforesaid judgment has observed that use of hyperboles or exaggerated language or the adoption of metaphors and the extravagance of expression in attack in

one another are all a part of the game, and so when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued in the cold atmospheres of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be considered in that light.

45. After noticing a number of judgments of the Hon'ble Supreme Court as well as of various other High Courts in the country, the test laid down in Section 83 in respect of material facts and full particulars has been elaborated in para 36 of Sapa's case and it is useful to reproduce the said paragraph hereunder :

"36. Following settled position of law emerges from the decisions already referred :

- (A) Section 83 of the Act is mandatory, hence an election petition must contain :
 - (a) a concise statement of facts on which the petitioner relies.
 - (b) fullest possible particulars of the corrupt practices that the petitioner alleges,
- (B) The material facts mean (a) facts necessary to formulate a complete cause of action, (b) all the preliminary acts which must be proved by the party to establish a cause of action, (c) the basic facts which constitute ingredients of particular corrupt practice, (d) all the facts which are essential to clothe the petitioner with complete cause of action, (e) the facts which if established would give the petitioner the relief asked for, (f) the facts on the basis of which the Court could give a direct verdict in favour of the election petitioner in case the returned candidate did not appear to oppose the petition, (g) facts which if not proved, the petition must fail.
- (C) A 'reasonable cause of action' is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. So long as claim discloses some cause of action or raises some questions, the mere fact that the case is weak and not likely to succeed is no ground for striking it out.
- (D) There is a difference between the 'material facts and particulars'. The function of particulars is to present as full a picture of a cause of action with such information in details as to make the opposite party understand the case he will have to meet. There may be some overlapping between 'material facts' and 'particulars' but the two are quite distinct. The distinction is one of degree. The 'material facts' are those which the party relies upon and which if it does not prove, he fails.
- (E) Mere reproduction of the words of the statute would not be sufficient to maintain a petition. The facts which constitute the corrupt practice have to be set out and they must be correlated to one of the heads of the corrupt practices.
- (F) Whether in an election petition a particular fact is material or not and as such required to be pleaded or not depends on charges levelled and the circumstances of the case. Thus decision of each case would depend on the facts and circumstances of that case.
- (G) An election petition can be summarily dismissed if it does not furnish a cause of action. If the mandatory requirements of Section 83 of the Act are not fulfilled appropriate order under Order VI, Rule 16 and under Order VII, Rule 11 of the Code of Civil Procedure can be passed. The whole purpose of conferring such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise mind of the respondent. The sword of Damocles need not be kept hanging over his

head without point or purpose. Since the Court has the power to act at the threshold the power must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power and that exercise of such power is warranted under the relevant provisions of law.

(H) An election petition cannot be dismissed in limine for want of particulars without giving an opportunity to the petitioner to supply better particulars."

46. What to talk of giving names of the persons who were present at the time the public speeches were made by the Chief Minister and the respondent the petitioner has not even given the composition of the audience nor he has specified as to whether it was a cross section of the electorates or only Hindu Rajput voters who were present at such meetings. The allegation appears to be a paper allegation only without any material facts which may constitute the ingredients of corrupt practice as required by the statute. Nothing has been stated in the petition that the speeches so made promoted hatred between different classes of citizens on the ground of religion and community. No particular of the speech has been pointed out as offending and all has been left to guess work.

47. It is too well-known that during the election scenario, tall political promises are always made and speeches made at the political level for canvassing voters have to be examined in the context of the atmosphere of the political campaign and passion. What Section 123 (3) of the Act bars is an appeal by the candidate or his agent with the consent of the candidate to vote or refrain from voting for any person on the ground of his religion. What has to be seen is that the speech promoted or was aimed to create a feeling of community or hatred as mentioned in Section 123 (3A) of the Act.

48. It is at this stage that notice may also be taken of a Division Bench judgment of this Court to which I myself is a party. The judgment was given in Election Petition No. 6 of 1994 [Kanwar Durga Chand vs. Ravidhar Singh (Ravi)]. The question which has arisen for consideration that case was whether the copy of the election petition in which the name and designation of the Oath Commissioner who attested the affidavit annexed with the petition, was not mentioned, is a true copy as per requirement of sub-section (3) of Section 81 of the Act or not? While answering this question, reliance was placed on the latest judgment given by the Supreme Court reported in (1996) 5 SCC 181 [Dr. Shipra (Smt.) and others vs. Shanti Lal Khoiwal and others]. It was held that the requirement is mandatory and forms integral part of the petition and in case of non-compliance therewith, copy of the petition cannot be treated as true copy. The omission was held to be of vital nature and the defect could not be cured. The election petition was ordered to be dismissed upholding the preliminary objections raised by the respondent in that case.

49. The reading of the contents of the petition, where reference to corrupt practices and undue influence has been made does give an impression that the pleadings besides being vague, vexatious scandalous indefinite and frivolous leaves one the make a roving and fishing enquiry. This will certainly not only prejudice but would also be embarrassing the fair trial of the election petition.

50. The manner in which the allegations have been projected in the petition do not fulfil the statutory requirement of the statement of material facts and full particulars of the alleged corrupt practices and undue influence as required by Section 123 (2) (3) and (3A) of the Act.

51. In view of the case law on the point spreading over a long period of time, the petitioner was required to specify material facts as well as full particulars so as to plead the manner, the act and conduct as well as utterances made by the respondent or the Chief Minister with clarity, that if interpreted, it would amount to an attempt to interfere with the free exercise in respect of the electoral rights amounting to corrupt practices directly or indirectly. It had to be specifically pleaded as to on whom in what manner and in what situation, place, date and time and in

whose presence the undue influence was exercised or instructions were passed on with the consent and connivance of the respondent with an attempt to better the chances of victory of the returned candidate. Similarly in the speeches made it had to be pointed out as to what particular phrase, sentence or word and spoken by whom and heard by whom, gave the impression of caste, community or religion.

52. I am further of the view that the allegations read as a whole, do not disclose any cause of action nor raise any triable issue which the returned candidate, i.e. the respondent in the present case is required to answer. These observations are based on a decision of the Hon'ble Supreme Court reported in AIR 1969 SC 1201 (Samant N. Balakrishna, etc. vs. George Fernandez and others etc.).

53. It is once again necessary to refer to the case of Rajiv Gandhi (AIR 1986 SC 1253) (*supra*) when their Lordships of the Hon'ble Supreme Court in para 10 of the judgment have gone to the extent of holding that **failure to plead even single material fact would amount to disobedience of the mandate of Section 83 (1) (a) and the election petition could, therefore, be and must be dismissed if it suffers from any such vice.**

(Emphasis added)

54. Issue No. 2 is in respect of non-joinder of necessary parties. It is held that there is no merit in the objection raised by the respondent in this respect nor any such requirement of law has been brought to my notice that the not-impleading of the persons mentioned in para 6 of the petition is a defect of such nature which would entail the rejection of the petition. The persons mentioned in para 6 of the petition cannot be held as necessary parties and the petition cannot be thrown out on that ground. The issue is held against the respondent.

55. The objection of the respondent in respect of the attestation as "true copy" on pages 1 to 24 of the petition as well as on the annexures is over-ruled as the petitioner has signed every page though the ritual of the words "true copy" has not been observed. I am of the considered opinion that the objection raised by the respondent is not tenable and the provisions of law stand substantially complied with and the defect is not of such nature which would entail the dismissal of the petition at the threshold. Issues No. 3 and 5 are answered accordingly.

56. In view of the discussion on issues No. 4, 6 and 7 the petition is rejected for want of non-compliance of the provisions of Section 83 of the Act i.e. for failure to incorporate in the petition the material facts and particulars relating to the alleged corrupt practices. The petition is ordered to be dismissed summarily as it does not furnish cause of action. The parties shall bear their own costs.

S/-

P. K. PALLI,
Attested Sd/-

Superintendent (Judicial)
High Court of H.P.
Shimla.

April 10, 1997.
(BC)